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March 10, 1999

VIA FACSIMILE AND U.S. MAIL

Peter Kaufman, Esq.
Deputy Attorney General
For the State of California
110 West "A" Street
Suite 1100
San Diego, California 92101

Re: Chiate/Wildman Easement Settlement Agreement

Dear Peter:

In accordance with your request, enclosed is a copy of Michael Fischer's August 11, 1994 memorandum to Peter Douglas, which is one of the documents we obtained from the public records request we made in 1996.

Also enclosed is a copy of the Standards and Recommendations for Accessway Location and Development adopted by the Conservancy and Coastal Commission. The design proposed by the Public Beach Access Feasibility Study prepared by Charles I. Rauw (the "Rauw Study") fails to evaluate the feasibility, cost, or improvements actually necessary to address most of the important issues contained in the Standards. In fact, from the Reference List of source documents contained in the Rauw Study, it appears that Rauw did not consult or utilize the Standards in preparing the recommended improvements and proposed design.

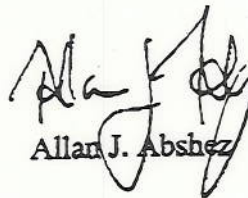
Without limiting the issues raised, or our future comments, we would direct your attention to Standard No. 1 (minimize alteration of natural landforms and be subordinate to the setting's character, protect environmentally sensitive habitat areas, safely accommodate public use and prevent unwarranted hazards to public safety (i.e. blind high-speed traffic conditions approaching the proposed driveways and insufficient on-site parking), and prevent the misuse of coastal resources); Standard No. 2 (correct or not increase erosion); Standard No. 4 (protect privacy); Standard No. 5 (prevent impacts to riparian and environmentally sensitive habitat areas); Standard No. 12 (provision of sanitation facilities and services, and emergency communications and access); and Standard No. 13 (accessways that accommodate or plan to accommodate those with mobility problems are the highest priority for State funding).

Peter Kaufman, Esq.
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CEQA Section 21106 also requires that state agencies "request in their budgets the funds necessary to protect the environment in relation to problems caused by their activities." To ensure that the Conservancy Board is presented with a more complete evaluation of the feasibility and actual cost of developing the Chiate/Wildman easement with improvements that make a basic effort to be responsive to the Conservancy and Coastal Commission's long-adopted Standards, we would recommend that the Rauw Study be supplemented or revised to take the Standards into account. To accommodate this purpose, we would be willing to reasonably cooperate with respect to scheduling proceedings before the Conservancy Board regarding the Settlement Agreement.

Please let me know how you would like to proceed, and as always, please do not hesitate to call if you have any questions or comments.

Very truly yours,



Allan J. Abshez

AJA:jrb
Enclosures

cc: Mr. Frank Mancuso
Mr. William Ahern
Jonathan Horne, Esq.

CALIFORNIA STATE COASTAL CONSERVANCY

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August 11, 1994

MEMORANDUM

To: Peter Douglas, California Coastal Commission

From: Michael L. Fischer, Executive Officer,
Coastal Conservancy

About: ACCESS EASEMENT TO ESCONDIDO BEACH OVER THE
CHIATE/MANCUSO-WILDMAN PROPERTIES

On August 4, 1994, I toured the access easement between Escondido Beach and PCH in the company of Susan McCabe, whose clients include both Wildman and Mancuso as well as with John (an attorney whose last name I forget) whose client is Mr. Wildman.

In tracing--or attempting to trace--the easement through the two properties, I learned three things:

First, the original subdivider located the easement in the least viable of all possibilities within his property. The easement goes along the edge of a ravine (on a highly erodable, steep slope) at its seaward end, up and over several small "clifflets" in its middle reach; the roadward reach presents no topographical difficulties.

Second, my judgement is the accessway, while difficult, is in fact buildable. It will require some handgrading to notch a trail into the side of the ravine and would require several small staircases. But I'm confident that the Conservation Corps could successfully undertake the work. One challenge, however, would be to successfully complete the work without straying outside the boundary of the ten foot easement. I assume that we would have to stay within the easement because the construction would have the active opposition of the property owners on both sides. However, I'm not sure whether the Coastal Commission condition (or our easement instrument) gives the Conservancy access to the adjacent property in order to construct retaining walls, fences, stairs or the trail itself.

Third, I learned that the homeowners on both sides of the easement have acted as though the easement does not exist. There are gates, driveways, parking areas, fences, and landscaping (including lawn areas as well as hedges) within our easement. I'm concerned that we may not have aggressively asserted our

facilities within our property. We will check the files to see if we've done so in order that we not lose either our rights or our bargaining chip. Indeed, it may be necessary for us to begin charging the neighbors for their use of our property in order to retain our rights.

But what do we do about all of this? It seems that me that we have three options:

One. We can do nothing. In essence, that's what's happening now. The \$325,000 which Black Tor was required to pay is in our account. Unfortunately, any interest that it's drawing is going into the general fund. Therefore, the value of that money is eroding away and no public access is being provided.

Two. We can build the easement. I'm not at all certain that \$325 thousand would be sufficient to do so, but (especially if we use the Conservation Corps) it could well be sufficient. Building on the easement, I would hunch, will require some legal effort up-front to get the adjacent property owners to remove all of their fences, gates, parking areas and hedges from the right of way. I can't imagine that work should be our responsibility; but neither can I imagine the neighbors responding to such a demand promptly or willingly.

And there's another problem: should we move to use the Black Tor monies to construct the accessway, I would expect Wildman's attorney to sue based on the statements which you are said to have made just before the public hearing on the Black Tor item seeking to dissuade John from opposing the in-lieu fee condition on the Black Tor permit. I'm told that you assured John that the Wildman access would never be built at that point. With that assurance, John did not oppose the Black Tor permit condition.

Three. We could, as you have already suggested, assemble the two resources we have at hand (the Black Tor in-lieu fee and the value of the Wildman Easement) and acquire and construct another easement to Escondido Beach. Frankly, it appears to our staff and to John that such a search will be a fruitless one. So then the question becomes: do we go beyond the boundaries of Escondido Beach in our search for other access possibilities?

Before we're to go beyond Escondido Beach, I believe that both Conservancy and Commission need to be assured that there are no other viable sites. I suggested to John and Susan that they retain the services of a neutral party (a group of landscape architectural students and their professor, together with several real estate students and their professor?) to exhaustively analyze the topography, locate reasonable access ways and then have a realtor solicit the interest of property owners in selling such accessways. Only after such an exhaustive, professional and independent search of Escondido Beach should you or I consider moving the money to another location.

But, assuming for the moment that we decline to undertake the construction of the Wildman easement as it stands, I believe that option one is unacceptable. We have resources at hand which will total approximately three quarters of a million dollars. Those resources should be employed toward the end to which they are intended: the provision of public access in the central Malibu area. If, after an exhaustive search of Escondido Beach, we can't find another viable location, then I believe we should go beyond Escondido Beach.

But, as I say, that assumes that we're not interested in constructing the Wildman easement as it now stands. I believe we ought to re-examine that prospect. Toward that end, I propose that the Conservancy use one of its landscape architectural consultants to re-examine the initial work we did to come up with our original cost estimate. If nothing else, our acting as though construction were a real possibility may spur the Mancuso/Wildman agents to a more vigorous search for alternatives. I'm told that both you and Peter Grenell assured the parties that this easement simply won't be built--in retrospect and in strategic terms, I believe that was an error. Because I really think the CCC could do the job for that amount, let's act as though that's our plan! (After, of course, we get the results from our landscape architect.)

Finally, Neil Fishman has made a creative suggestion: use the \$750,000 (or so) to endow the operation of a Zodiac shuttle to Escondido Beach from the nearest parking lot. Such an endowment would spin off about \$35,000/year; together with a modest fare (\$1 per), that might be enough to interest a concessionaire. And what a neat precedent to set!

Before sharing any of these thoughts with Susan and before taking any further action, I would like to hear from the five of you--what are your thoughts?

MLF:sgc

cc: Brenda Buxton
Linda Locklin
Joan Cardellino
Marcia Grimm

Standards and Recommendations for Accessway Location and Development

These standards provide guidelines for the location, size and type of accessways along the California coast. San Francisco Bay accessway standards are available from the San Francisco Bay Conservation and Development Commission. The California Coastal Commission and Conservancy adopted these standards to ensure a consistent approach is used for access construction. Since sites and circumstances vary along the coast the application of these standards is flexible. These standards apply to all new and existing developments.

Standard No. 1 *Protect the Public and Coastal Resources*

Coastal access facilities should be located where they safely accommodate public use. Their distribution should prevent crowding, parking congestion, and misuse of coastal resources. To fulfill this goal, accessway design and location should: a) minimize alteration of natural landforms and be subordinate to the setting's character; b) prevent unwarranted hazards to the land and public safety; c) ensure the privacy of adjoining residences; and d) protect environmentally sensitive habitats and agricultural areas.

Standard No. 2 *Correct Hazards*

The management and construction of accessways should correct or at least not increase the potential of any hazard, such as fire or erosion. At times when there is an increased hazard, for example during pesticide application in agricultural areas, the accessway should be closed.

Standard No. 3 *Access Easements: Construction and Location*

Accessways built on easements, such as offers-to-dedicate, should be no wider than necessary. Width of accessways can vary from a minimum of 30 inches for a trail to 10 feet or wider for ramps or paved walkways, depending on topography and the existing development. Wheelchair access should be provided wherever possible.

Standard No. 4 *Privacy*

The design and location of accessways should consider the privacy of adjoining residences. Vertical accessways may be fenced or screened with landscaping on the property line and be closed at night, depending on the needs of the adjoining residences.

Standard No. 5 *Environmentally Sensitive Areas*

Access projects to areas such as wetlands, tidepools, or riparian areas should be evaluated on a case-by-case basis to ensure that the projects: a) are consistent with the policies of Chapter Three of the Coastal Act; b) avoid adverse effects on the resource and, if possible, enhance the resource; c) are reviewed by the Department of Fish and Game and the California Coastal Commission.

Standard No. 6 *Lateral Accessways: Construction and Location*

A lateral accessway is an area of land that provides the public with access and recreational use along the water's edge.

Lateral accessways should include a minimum of 25 feet of dry sand at all times of the year or the entire sandy area if the beach is less than 25 feet. They should not extend further inland than any shoreline protective structures; nor should they come closer than 10 feet to an existing singlefamily home. Specifications for construction will vary depending on the Local Coastal Program (LCP) requirements or Commission permit conditions.

Due to the proximity of the ocean and winter storm waves, construction of support facilities on lateral accessways should be kept to a minimum. Retractable ramps or boardwalks, however, not only enable the handicapped to reach the water, but they also can be removed as the seasons dictate.

Standard No. 7 *Vertical Accessways: Construction and Location*

A vertical is an area of land connecting the first landward public road, trail, or use area with a public beach or lateral accessway, used to get people to the shore. Vertical accessways should be a minimum 10 feet wide.

Urban areas: Vertical accessways in urban areas should be located where streets end at the shoreline, once every six parcels, or up to once every 500 feet. New multiple-family residential projects of five dwelling units or more should provide sufficient space for a vertical accessway and public parking and pay for their construction. Condominium conversions of the same type of units should provide a vertical accessway, either on-site or in the same general area. The existence of public beaches nearby could reduce the number of verticals needed.

Commercial development should incorporate or preserve views of the ocean and vertical access, as well as construct and maintain the accessway as part of the project. Industrial development should provide vertical access and parking improvements according to the extent to which the potential public use is displaced by the facility.

Rural areas: When beachfront parcels are subdivided in rural areas, owners should provide a vertical accessway either as a separate parcel or as an easement over the parcels to be created. More than one vertical accessway may be required if the parcels contain more than one beach area or the beach is 1/4 mile or longer. Residential developments should use the standards suggested for urban development.

Vertical accessways in agricultural and timber lands should be wide enough to protect accessway users as well as the crops. At least one accessway should be provided or acquired on such lands if they contain a beach appropriate for safe public use.

Stairways, ramps, trails, over- or underpasses are some of the facilities that can be built on vertical accessways. Drainage systems to prevent erosion may also be necessary.

Standard No. 8 *Trails*

A trail provides continuous public access either along a coastal bluff or links inland recreational facilities to the shoreline. Specifications for construction will vary according to the LCP.

Trail easements should be a minimum of 25 feet in width. They should never be closer than 10 feet to an existing residence.

Trails should be established on ocean front parcels, depending on the topographic conditions. These trails should connect: a) the shore with inland units of the federal, state, or local park systems; b) access easements; or c) the road with a scenic overlook. Such trails must avoid geologically unstable and erosive soils. Prime agricultural soils should also be avoided except where the trail will not interfere with agricultural production.

Trails can feature steps, footbridges, appropriate paving materials, adequate trail drainage system, trash receptacles, benches, barriers, restrooms, and signs.

Standard No. 9 *Scenic Overlooks*

A scenic overlook provides the public a unique or unusual view of the coast.

Development of scenic overlooks can vary from a simple roadside turnout with only trash cans, parking, and fencing as appropriate, to a more elaborate roadside rest area. Overlooks that are not next to a road should be accessible by trail, ramps or stairs, and be accessible to those with physical disabilities.

Standard No. 10 *Coastal Bikeways*

Coastal bikeways are paths specifically designated to provide access to and along the coast by nonmotorized bicycle travel as defined in Section 2373 of the Streets and Highway Code.

There are three classes of bikeways:

Class I Bikeway — Bike Path

A completely separated right-of-way designated for the exclusive use of bicycles and pedestrians.

Minimum surface width of 8 feet for a two-way path and 5 feet for a one-way path and provision for a 2 foot wide graded area adjacent to either edge of the paths.

Class II Bikeway — Bike Lane

A Class II bikeway is a right-of-way in the paved areas of highways that is restricted for the use of bicycles. Motor vehicle parking and cross-flows are permitted.

To be classified as a Class II bikeway, the bikeway should be four feet wide on roads in outlying areas where parking is prohibited, 5 feet wide when parallel parking is allowed, or 11 to 13 feet wide when parallel parking is allowed and designated by specific striping.

Class III Bikeway — Bike Route

A Class III bikeway is a surface street that is shared with pedestrians or motorists. These routes are used primarily to provide a continuous link between Class I and II bikeways.

All classes of bikeways must feature a graded and paved path, bike racks, vehicle barriers, fencing, and signs. On a Class II and III, signs and striping are required.

Standard No. 11 *Hostels*

Hostels are low-cost public travel accommodations that provide sleeping, kitchen, and bath facilities for traveling families, groups, and individuals of all ages. Following the example of the hostels in Europe, which generally allow a maximum stay of three nights, California coastal hostels combine low-cost lodging with educational, social, and cultural opportunities.

Hostels should have sufficient space for a minimum of 24 people, and one parking space for every eight guests and each residential staff person. Existing buildings, such as lighthouse stations, preferably on public or park land, should be used for hostel sites whenever renovation is economically feasible and the structures are appropriate to current surrounding land use.

Ideally, hostels should be located at intervals of 20 to 40 miles, on or near the coast, and within two miles of recreational trails. If more than five miles of normal bicycle travel is required to get from one campground or hostel to another then campgrounds should be used to provide lodging.

Hostels should feature beds, kitchens, and bathrooms mentioned above as well as public telephones, location signing along highways, and public transit stops.

Standard No. 12 *Support Facilities*

Support facilities are structures that make it easier for people to use and maintain coastal accessways: signs, trash receptacles, public telephones, restrooms, showers, bike security racks, public transit loading and unloading areas, campgrounds, and parking areas fit into this category. The support facilities that each accessway will require should be decided on a case-by-case bases. Directional and resource interpretation signs are available from the Coastal Conservancy.

Standard No. 13

Barrier-Free Access

All accessways must be made wheelchair-accessible unless this would present an unreasonable hardship. Grounds for an unreasonable hardship are to be determined by the enforcement agency for the region.

Accessways that accommodate or plan to accommodate those with mobility problems are the highest priority for State funding. The standards for these accessways and their support facilities should at least meet, if not exceed, the requirements of Title 24 of the California Administrative Code. The Office of the State Architect has written a guide to Title 24, the California State Accessibility Standards Interpretive Manual. This manual is available for \$8.00 from the Office of the State Architect, Access Compliance Unit, P.O. Box 1079, Sacramento, CA 95805.